

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 R. ALEXANDER ACOSTA,

11 Plaintiff,

12 v.

13 HOA SALON ROOSEVELT, INC.,  
14 et al.,

15 Defendants.

CASE NO. C17-0961JLR

ORDER DENYING MOTION TO  
MODIFY THE SCHEDULING  
ORDER

16 **I. INTRODUCTION**

17 Before the court is Defendants Hoa Salon Roosevelt, Inc., Hoa Salon Ballard, Inc.,  
18 Hoa Salon Madison, Inc., Thuy Michelle Nguyen Pravitz, Eric Pravitz, Huyen Nguyen,  
19 Thuy Hong, and Lam Huynh's (collectively, "Defendants") motion to modify the  
20 scheduling order and extend the trial date by approximately 90 days. (Mot. (Dkt. # 23).)  
21 Plaintiff R. Alexander Acosta, Secretary of Labor, did not file an opposition to the  
22 motion. (*See generally* Dkt.) The court has reviewed the motion, relevant portions of the

1 record, and the applicable law. Being fully advised, the court concludes that Defendants  
2 have failed to demonstrate good cause for a 90-day modification of the case schedule  
3 and, therefore, DENIES the motion. The court will, however, accommodate an extension  
4 of the trial date to the end of the court’s current trial calendar if the parties so stipulate  
5 within seven (7) days of the filing date of this order as more fully described herein.

## 6 **II. BACKGROUND**

7 Plaintiff filed a complaint on June 22, 2017, seeking to (1) enjoin Defendants from  
8 allegedly violating Sections 6, 7, 11, and 15 of the Fair Labor Standards Act of 1938, as  
9 amended (“FLSA”), 29 U.S.C. §§ 206, 207, 211, 215, and (2) recover wages allegedly  
10 owed under the FLSA to Defendants’ present and former employees, as well as liquidated  
11 damages pursuant to Section 16(c) of the FLSA, 29 U.S.C. § 216(c). (*See* Compl. (Dkt.  
12 # 1).) On November 6, 2017, the court entered a scheduling order setting the jury trial to  
13 begin on February 11, 2019, the deadline for discovery motions on September 14, 2018,  
14 and the discovery cutoff on October 15, 2018. (Sched. Order (Dkt. # 17) at 1.)

15 On October 30, 2018—after both the discovery motions deadline and the  
16 discovery cutoff had passed—Defendants filed the present motion asking the court to  
17 “continue the February 11, 2019, trial date 90 days to May 13, 2018, . . . and to continue  
18 all other deadlines for 90 days . . . .” (Mot. at 2.) Defendants advanced three reasons for  
19 the continuance. (*See id.*) First, they believed Plaintiff had agreed to dismiss the claims  
20 against Defendants Hoa Salon Madison, Huyen Nguyen, Thuy Hong, and Lam Huynh,  
21 and accordingly, they halted preparations for these Defendants. (*Id.*) However, Plaintiff  
22 recently indicated that he did not understand the agreed dismissal to include Hoa Salon

1 Madison. (*Id.*) Thus, Defendants argue that they now need additional time to prepare for  
2 summary judgment and trial for this Defendant. (*Id.*) Second, Defendants argue that  
3 they have been unable to obtain responses to their August 10, 2018, discovery requests  
4 despite Plaintiff's assurances that such responses were forthcoming. (*Id.*) Third,  
5 Defendants assert that they have been unable to depose Plaintiff's witnesses due to  
6 Plaintiff's failures to (1) produce written discovery responses, (2) identify certain  
7 witnesses, and (3) follow through with scheduling employee witness depositions.

8 Plaintiff failed to file any opposition to Defendants' motion. (*See generally* Dkt.)  
9 However, on November 1, 2018, Plaintiff filed a stipulated motion dismissing Hoa Salon  
10 Madison, Huyen Nguyen, Thuy Hong, and Lam Huynh from this action. (Stip. Mot.  
11 (Dkt. # 26).) The court entered the stipulated motion as an order on November 6, 2018.  
12 (11/6/18 Order (Dkt. # 28).) The court now considers Defendants' motion.

### 13 **III. ANALYSIS**

14 Federal Rule of Civil Procedure states that a scheduling order "may be modified  
15 only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). The "good  
16 cause" standard focuses on the diligence of the party seeking to modify the pretrial  
17 scheduling order. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir.  
18 1992). If a party has acted diligently yet still cannot reasonably meet the scheduling  
19 deadlines, the court may allow modification of the pretrial schedule. *Id.* However, "if  
20 that party was not diligent, the inquiry should end," and the motion to modify should not  
21 be granted. *Id.*; *see also Millenkamp v. Davisco Foods Int'l, Inc.*, 448 F. App'x 720,  
22 721 (9th Cir. 2011); *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir.2002).

1 Defendants' first argument for an extension of the case schedule—Plaintiff's  
2 apparent reversal of his agreement to dismiss Hoa Salon Madison, Inc.—is now moot.  
3 Plaintiff filed a stipulated motion to dismiss this Defendant and the court entered the  
4 stipulated motion as an order. (*See* Stip. Mot.; 11/6/18 Order.) Thus, Defendants no  
5 longer require additional time to prepare their defense of Hoa Salon Madison, Inc.

6 Nevertheless, Defendants argue that they have established “good cause” because  
7 they “have been unable to complete discovery . . . .” (Mot. at 8.) Defendants lay the  
8 blame for their failure largely at Plaintiff's feet—arguing that Plaintiff repeatedly assured  
9 Defendants that his discovery responses would be forthcoming when they were not. (*See*  
10 *id.* at 4-6, 8.) Defendants also argue that they “will suffer substantial prejudice without a  
11 modification of the case schedule, as their ability to prepare for summary judgment and  
12 trial will be greatly impacted without Plaintiff's discovery responses or conducting  
13 depositions.” (*Id.* at 9.) The court is unpersuaded that Defendants have met the “good  
14 cause” standard for the 90-day extension they request.

15 The court's scheduling order provides a remedy for parties who are unable to  
16 secure discovery from an opposing party: The aggrieved party can file a motion to  
17 compel discovery. (*See* Sched. Order at 1.) If Defendants had done so here, the court  
18 could have resolved the parties' discovery issues within a timeframe that would have  
19 eliminated Defendants' present issues with the case schedule. Local Civil Rule 16(b)  
20 provides that the dates in the scheduling order are binding and “[m]ere failure to  
21 complete discovery within the time allowed does not constitute good cause for an  
22 extension or continuance.” Local Rules W.D. Wash. LCR 16(b)(5). Indeed, the court's

1 own scheduling order expressly warns that the “failure to complete discovery within the  
2 time allowed is not recognized as good cause” to alter the case schedule. (Sched. Order  
3 at 2.) To the extent that Defendants are now “prejudiced” in their ability to prepare for  
4 summary judgment or trial, it is a prejudice largely of their own making. Accordingly,  
5 the court concludes that Defendants have not established “good cause” for a 90-day  
6 alteration of the case schedule or trial date.

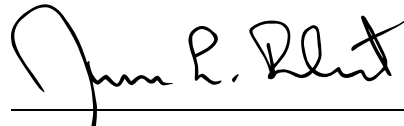
7 The court, however, emphasizes that it does not approve of Plaintiff’s conduct  
8 either. Plaintiff’s stonewalling of any response to the written discovery and depositions  
9 that Defendants have been requesting since August 2018, is unacceptable conduct in  
10 federal district court. The court notes that Plaintiff filed no opposition to Defendants’  
11 motion, and so the court accepts as true Defendants’ statements concerning the conduct  
12 of the parties during the course of discovery here. The court also presumes, based on  
13 Plaintiff’s lack of opposition, that Plaintiff does not oppose an extension of the case  
14 schedule and trial date. Based on these observations, the court will offer the parties an  
15 alternative solution. The court is unwilling to accommodate a 90-day extension as  
16 Defendants request because Defendants failed to demonstrate “good cause” and such an  
17 extension might unfairly result in the postponement of another trial where the parties  
18 timely prepared their cases and adhered to the court’s case schedule. The court will,  
19 nevertheless, consider moving the parties’ trial date to the end of the court’s trial  
20 calendar. This avoids placing anyone else’s trial date in jeopardy. If the parties desire  
21 this relief, they should file a stipulation to that effect on the court’s docket within seven  
22 (7) days of the filing date of this order. The parties should be aware that the court is

1 presently scheduling trials in approximately late February or early March 2020. If the  
2 court moves the parties' trial to the end of its trial calendar, the court will also issue an  
3 amended scheduling order for certain pretrial deadlines, including the discovery cutoff  
4 and the deadline for discovery motions.

#### 5 **IV. CONCLUSION**

6 Based on the foregoing analysis, the court DENIES Defendants' motion for a  
7 90-day extension of the case schedule and trial date (Dkt # 23). Nevertheless, if the  
8 parties so stipulate within seven (7) days of the filing date of this order, the court will  
9 move the trial date herein to the end of its current trial calendar and issue a new  
10 scheduling order with respect to certain pretrial deadlines as described above.

11 Dated this 9th day of November, 2018.

12  
13 

14 JAMES L. ROBART  
15 United States District Judge  
16  
17  
18  
19  
20  
21  
22